

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

JUL - 7 2008

CLERK, U.S. DISTRICT COURT
By _____ Deputy

FERMAN WAYNE SIMS II,

§

Petitioner,

§

VS.

§

NO. 4:07-CV-135-A

§

NATHANIEL QUARTERMAN,
Director, Texas Department
of Criminal Justice,
Correctional Institutions
Division,

§

§

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§

§

Respondent.

§

O R D E R

Came on for consideration the above-captioned action wherein Ferman Wayne Sims II ("Sims") is petitioner and Nathaniel Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division ("Director"), is respondent. This is a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. On April 4, 2008, the United States Magistrate Judge issued his proposed findings, conclusions, and recommendation ("proposed FC&R"), and ordered that the parties file objections, if any, thereto by April 25, 2008. The court subsequently granted Sims two extensions of the deadline to file his objections, with the last deadline being June 26, 2008. Sims

timely filed his written objections, and respondent made no further response.

In accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, the court makes a de novo determination of those portions of the proposed findings or recommendations to which specific objection is made. United States v. Raddatz, 447 U.S. 667 (1980). The court need not consider any nonspecific objections or any frivolous or conclusory objections. Battle v. United States Parole Comm'n, 834 F.2d 419, 421 (5th Cir. 1987).

Sims filed his federal petition for writ of habeas corpus in this court on February 26, 2007, pursuant to 28 U.S.C. § 2254, citing seven grounds as the basis for the petition. The magistrate judge found that, as to grounds one through six of the petition, Sims had failed to overcome the presumption of correctness of the state courts' determination of his claims.¹ The magistrate judge further found that Sims failed to exhaust his state court remedies as to the seventh ground in the petition.

¹Sims appealed his conviction, which the Second Court of Appeals affirmed. The Texas Court of Criminal Appeals refused Sims's petition for discretionary review.

Sims made no specific objections to any of the proposed FC&R. Rather, he reiterated his version of the factual background of the case, and raised, for the first time, a claim of ineffective assistance of trial counsel. Because Sims's argument is not a specific objection to the magistrate judge's finding, the court need not consider it. See Battle, 834 F.2d at 421.

Therefore,

The court accepts the findings, conclusions and recommendation of the magistrate judge and ORDERS that the petition in this action be, and is hereby, denied.

SIGNED July 7, 2008.

JOHN McBRYDE
United States District Judge